IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 313

BROTHERHOOD OF RAILROAD TRAINMEN, ETC., ET AL.,
Petitioners,

v.

CHICAGO RIVER AND INDIANA RAILROAD CO., ET AL.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

MOTION OF RAILWAY LABOR EXECUTIVES' ASSOCIATION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE IN SUPPORT OF PETITION FOR REHEARING

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The Railway Labor Executives' Association* respectfully moves the Court for leave to file a brief as *amicus curiae* in the above-entitled action in support of a petition for rehearing filed herein by petitioners Brotherhood of Railroad Trainmen, et al. With the consent of the parties the Association heretofore filed a brief as *amicus curiae* on the merits of the case. The Court's decision was issued on March 25, 1957, and petitioners have filed a petition for

* The organizations comprising this Association represent over 90% of all railroad employees in the United States.

rehearing of such decision. Because consent of respondents to the filing of a brief *amicus curiae* in support of the petition for rehearing was denied, this motion is filed pursuant to Rule 42 (3) of the Revised Rules of this Court.

The petition for rehearing raises questions of vital importance not only to petitioners but also to all railroad labor organizations and the employees they represent. As stated by petitioners, the decision of this Court was based upon a ground the involvement of which was not anticipated by the parties to the action and was not considered or discussed by them or by us or by the courts below. In the Court of Appeals the issue presented for determination was stated as whether the Railway Labor Act prohibits a union from striking over matters "which are *within the jurisdiction* of the National Railroad Adjustment Board." 229 F. 2d 926, 929 [Italics supplied.] In this Court, both petitioners and respondents directed their attention and argument to that issue. This Court stated that the ultimate question before it was "whether a railway labor organization can resort to a strike over matters *pending* before the Adjustment Board", and held that resort to strikes could not be had over disputes pending before the Board. That the Court considered the pendency of the dispute before the Board the critical fact is shown by its decision two weeks later in *Manion* v. *Kansas City Terminal Railway Company*, No. 702, decided April 8, 1957, where resort to a strike was held not prohibited over disputes of the same nature if the disputes were not actually pending before the Board.

The Court's conclusion was predicated on the proposition that once either party to a dispute has submitted it to the Adjustment Board, that Board makes a decision which is "final and binding upon both parties", and because it is final and binding upon *both parties*, the alternative remedy of a strike is unavailable. This proposition, which was not briefed or argued, overrules decisions of lower courts

without mentioning that it does so, and will result in far-reaching changes in the administration of the Railway Labor Act.

This Court's statement of the finality of Board awards is made without the qualifying language of Section 3 First (m) of the Act "except in so far as they shall contain a money award." The court below, in referring to the finality of awards, used the qualifying language "except in instances where judicial review and enforcement of awards are expressly provided for or contemplated by the Act." 229 F. 2d 926, 931.

It was precisely because of this interpretation of the language of Section 3 First (m) by the Court of Appeals that neither petitioners nor *amicus curiae* regarded the "final and binding" language of the statute as crucial to the decision here. The claims involved in the instant case were claims for money which, if sustained, would result in money awards. As a consequence, the statutory language which this Court considered determinative in reaching its decision was not considered in any of the briefs or argument as significant to the issue presented.

We agree with petitioners that an opportunity should be afforded properly to consider the issue as recast by this Court's decision. It is of the utmost importance that certain additional pertinent authority and argument be brought to this Court's attention for the reason that the final and binding character which the Court attributes to Adjustment Board awards omits consideration not only of certain statutory language but is contrary to all decisions to date of which we have knowledge concerning the finality of Board awards involving a money payment. There are now pending before the several divisions of the Adjustment Board thousands of cases involving money claims. Heretofore if these awards were denied, the decision of the Adjustment Board has been final and binding. But where the awards have been sustained, the carriers have

been free to ignore them subject only to an enforcement suit in the courts under Section 3 First (p) of the Act [45 U.S.C. § 153 First (p)], in which case the only effect given the "final and binding" award is "prima facie evidence of the facts therein stated."

The dilemma created by this consistent practice of the courts when dealing with money awards of the Adjustment Board and this Court's construction of the statute in the instant case is a very real one. Does the Court's decision mean that in grievances involving the payment of money the right of employees to strike is not barred because any resulting awards would not be final and binding decisions of the Adjustment Board? Or does the Court mean that the lower courts have uniformly misinterpreted the statute and all awards of the Board are final and binding upon both parties and subject to enforcement as such by the courts? Or does the decision mean that courts have the right to review the *amount* of the money awarded but not the Board's interpretation of agreements from which such money payment results? Adoption of any construction of the statute other than the stated possibilities is incompatible with the basic ground of this Court's decision and clearly refutes the fundamental premise of the court that submission of a dispute by either party of the Adjustment Board brings about compulsory arbitration resulting in a decision which is "final and binding upon both parties."

Moreover, in the absence of an opportunity, through a grant of the petition for rehearing and this motion, for all parties vitally concerned to address themselves to these important considerations and have them clarified by the Court, we fear that the Court's decision will have practical consequences that will seriously interfere with the efficient operation of the Railway Labor Act. We believe the decision, absent reconsideration and clarification, will discourage and frustrate voluntary settlement of disputes contrary to the intent and purpose of the statute, will dras-

tically increase the number of disputes referred to the Adjustment Board, and will seriously endanger the present machinery of the Act for the disposition of disputes.

In a situation far less drastic in terms of its scope and impact on the Railway Labor Act and all of railroad labor, and far less serious in terms of the lack of an opportunity to be fully heard on matters considered important by the Court, this Court has heretofore permitted a full and careful exploration of the problem. See *Elgin Joliet & Eastern Ry. Co.* v. *Burley*, 326 U.S. 801, 327 U.S. 661, see particularly pp. 668-674.

For the foregoing reasons, this motion for leave to file a brief as *amicus curiae* in support of the petition for rehearing should be granted.

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